

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,  
W.A. DREW EDMONDSON, in his  
capacity as ATTORNEY GENERAL  
OF THE STATE OF OKLAHOMA,  
et al.

Plaintiffs,

V.

TYSON FOODS, INC., et al.,

Defendants.

No. 05-CV-329-GKF-PJC

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HAD ON AUGUST 18, 2009

MOTION HEARING

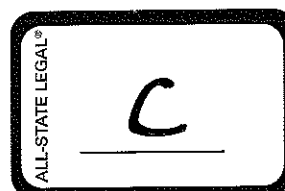
BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

APPEARANCES:

For the Plaintiffs: Ms. Kelly Hunter Foster  
Assistant Attorney General  
313 N.E. 21st Street  
Oklahoma City, Oklahoma 73105

Mr. David Riggs  
Mr. David P. Page  
Mr. Richard T. Garren  
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Orbison & Lewis  
502 West 6th Street  
Tulsa, Oklahoma 74119

Glen R. Dorrough  
UNITED STATES COURT REPORTER



1 George's defendants, Your Honor.

2 MR. ELROD: John Elrod and Vicki Bronson for Simmons,  
3 Your Honor.

4 MR. MCDANIEL: Scott McDaniel for Peterson Farms.

5 MR. JORGENSEN: Jay Jorgensen for the Tyson  
6 defendants.

7 MR. GEORGE: Robert George also for the Tyson  
8 defendants.

9 THE COURT: I'm informed and also noticed that  
10 Cal-Maine is not here this morning. Apparently we had a  
11 problem with a flight connection and Mr. Redemann had what, an  
12 illness or a death in his family?

13 MR. BASSETT: His brother passed away, Your Honor.

14 THE COURT: Is that going to present any problems with  
15 proceeding here this morning?

16 MR. GEORGE: Not from the defendants, Your Honor.

17 MR. BULLOCK: Not for the plaintiffs, Your Honor.

18 THE COURT: Very well. With regard to the State of  
19 Oklahoma's motion for reconsideration of the Court's July 22nd,  
20 2009 opinion and order, docket number 2392, that motion will be  
21 denied for the reasons set forth in defendants' joint response  
22 and Mr. Jorgensen's argument before the Court last week. The  
23 Court concludes that CERCLA does not authorize the State of  
24 Oklahoma to serve unilaterally as trustee or as a cotrustee  
25 over the Cherokee Nation's natural resources, including but not

1 limited to the Cherokee Nation's claim to water rights. Upon a  
2 review Coeur d'Alene 2 that case involved a co-trusteeship  
3 between the United States and the tribe. It did not address  
4 the unique issues involving ownership of river water and other  
5 natural resources as between the State of Oklahoma and the  
6 Cherokee Nation where the Cherokee Nation preexisted the State.

7 Second, in the event anyone here misapprehended the  
8 court's ruling on the defendants' motion for summary judgment  
9 on RCRA -- and unfortunately there's just not time to issue  
10 scholarly opinions on each one of these, but these many  
11 motions, but the Court did not rule that poultry litter is a  
12 solid waste, but rather that in light of EPA's position on what  
13 constitutes quote, "discarded" end quote, materials as  
14 reflected in EPA's regulatory stance and it's position taken in  
15 the Seaboard swine effluent matter, the application of poultry  
16 litter can or may constitute the discarding of solid waste in  
17 particular situations. Further, there are evidentiary  
18 materials before this Court indicating that in some particular  
19 occasions poultry litter may have been discarded in sufficient  
20 quantities so as to constitute the discarding of solid waste.  
21 Your job as attorneys, in the event this matter goes to trial,  
22 is to show this Court where that line should be drawn. As I  
23 say, if we don't adopt the black or white position and take the  
24 gray position, then we've got to decide where the line is drawn  
25 within those shades of gray.